**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

| | | |
|---|---|---|
| **JOHNNY D. DAVIS** | ) | |
| Claimant | ) | |
| VS. | ) | |
| | ) | |
| **THE BOEING COMPANY** | ) | Docket No. 1,050,418 |
| **SPIRIT AEROSYSTEMS, INC.** | ) | Docket No. 1,040,108 |
| Respondents | ) | |
| AND | ) | |
| | ) | |
| **INDEMNITY INS. CO. OF NORTH AMERICA**[1] | ) | |
| **AMERICAN HOME ASSURANCE CO.**[2] | ) | |
| Insurance Carriers | ) | |

## ORDER

Claimant and respondent Spirit Aerosystems, Inc., requested review of the July 13, 2012, Award by Administrative Law Judge (ALJ) Nelsonna Potts Barnes. The Board heard oral argument on December 14, 2012.

### APPEARANCES

Thomas E. Hammond, of Wichita, Kansas, appeared for the claimant. Kirby A. Vernon, of Wichita, Kansas, appeared for Spirit Aerosystems, Inc. (Spirit) and its carrier American Home Assurance. Eric K. Kuhn, of Wichita, Kansas, appeared for The Boeing Company (Boeing) and its insurance carrier Indemnity Ins. Co. of North America.

### RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

---

[1] Docket No. 1,050,418 (Date of Accident, March 15, 2010).

[2] Docket No. 1,040,108 (Date of Accident, April 22, 2008).

## ISSUES

The ALJ, in Docket No. 1,040,108, found claimant to have a 5 percent functional impairment and a 50 percent permanent partial general (work) disability pursuant to K.S.A. 44-510e. In Docket No. 1,050,418, the ALJ found claimant entitled to authorized medical expenses in the amount of $3,508.59.

Spirit appeals, arguing that Boeing is responsible for any impairment and work disability claimant sustained following the March 15, 2010, work-related accident. Spirit further argues that if the Board determines claimant did not sustain a permanent injury or aggravation as a result of the March 2010 accident and instead a temporary aggravation of his preexisting condition, Spirit cannot be held liable for a work disability caused by an intervening work accident at a different employer. In the event the Board finds claimant is entitled to a work disability on review and modification against Spirit, claimant would be entitled to a 50 percent work disability and Spirit entitled to a credit for a 20 percent preexisting whole body functional impairment. Finally, Spirit argues it is entitled to an offset against any general body disability for the period claimant was earning comparable wages, if the Board finds claimant is entitled to the average of his wage loss and task loss in Docket No. 1,040,108.

Claimant also appeals, arguing the Award should be modified to reflect that he has sustained a permanent injury during his work at Boeing and should be awarded an 81 percent work disability in Docket No. 1,050,418. In the alternative, should the Board find the Boeing accident to be a temporary aggravation the Board should modify the Award in Docket No. 1,040,108 to reflect a 80 percent work disability.

Boeing argues that the evidence clearly shows claimant sustained only a temporary aggravation of his prior condition as the result of the injury at Boeing on March 15, 2010. Therefore, claimant is not entitled to permanent partial disability benefits on the claim against Boeing and the ALJ's Award should be affirmed.

The issues before the Board are as follows:

1. What is the nature and extent of disability, if any, in Docket No. 1,040,108 and Docket No. 1,050,418?;

2. What is claimant's average weekly wage in Docket No. 1,040,108?;

3. When determining the nature and extent of claimant’s injury and disability, is claimant entitled to the average of his wage and task loss in Docket No. 1,040,108, and is Spirit entitled to an offset against any general body disability for the periods the claimant was earning comparable wages?

## FINDINGS OF FACT

Claimant began working for the Boeing in April of 1985. Claimant injured his low back and had problems with his left leg in 1994 after pulling carpet tile. Claimant filed and settled a claim for a 15 percent whole person functional impairment. He had restrictions for a short time. He was laid off from Boeing in January 2006 remaining unemployed through June 2006.

Claimant began working for Spirit in June 2006 as a crib sealer attendant. He was making $25 an hour. The majority of this job involved mixing paint and epoxies and filling sealer tubes. The job required bending and lifting 5 gallons buckets.

Claimant injured his low back while working for Spirit, on April 22, 2008, after bending over to pick up a dolly. Claimant also complained of problems with his right leg and right hip.[3] Claimant was sent to therapy and improved. Claimant settled this new back claim for an additional 5 percent whole body permanent functional impairment. He continued to have problems with his back off and on in 2008. However, after both the 1994 accident and the 2008 accident, claimant returned to work without restrictions.

Claimant met with Dr. Jenkins on April 28, 2008, and was diagnosed with right paraspinous muscular inflammation. Physical therapy and an MRI were recommended and claimant was provided with temporary restrictions. On May 7, 2008, claimant was seen by Dr. Estivo and was diagnosed with degenerative disc disease at L4-5 and L5-S1. A series of epidural injections was recommended along with physical therapy. Claimant experienced a good result from the injections. Claimant returned to Dr. Estivo on May 28, 2008, and was told to continue with physical therapy and was assigned the same temporary restrictions. Dr. Estivo released claimant on June 18, 2008, at maximum medical improvement with a diagnosis of degenerative disc at L4-L5 and L5-S1 that was asymptomatic. He assigned claimant a 0 percent impairment and released claimant to return to work without restrictions.[4]

Claimant stopped working for Spirit in August 2008 and returned to work for Boeing as a Lube Tech. This job involved greasing and lubricating old machines, air conditioners and gates, and also changing coolant in all of the machines and helping the mechanics. The job required lifting 55 gallon barrels and 5 gallon jugs, also bending, crawling and climbing stairs ladders and other things. Claimant testified that he was unable to lift the 55 gallon barrels, so he would slide them.

---

[3] R.M.H. & R.H. Trans. (Jan. 9, 2012) at 12-13.

[4] Murati Depo. at 6-7.

At the request of his attorney, claimant met with physical medicine and rehabilitation specialist Pedro A. Murati, M.D., for an examination on September 3, 2008. Claimant presented chief complaints of low back pain extending into the hips, worse on the right than the left, occasional aching sensation in the right leg, occasional numbness and tingling in both legs, worse on the right than the left and occasional shooting jolts of pain in the low back extending into the hips.[5] Dr. Murati noted that claimant was still working for Spirit without restrictions.

Dr. Murati examined claimant and diagnosed low back pain with signs and symptoms of radiculopathy and left SI joint dysfunction. He advised claimant to work as tolerated and to use common sense. This was at claimant's request so that he could keep working and not lose his job. Dr. Murati related his diagnoses to claimant's work-related injury on April 22, 2008, during his employment with Spirit. He also assigned a 10 percent whole person impairment for the low back pain secondary to radiculopathy and under the Lumbosacral DRE Category III of the fourth edition of the AMA *Guides*.[6]

Claimant reported that in March 2010, while working for Boeing, he was sliding a barrel and picking up a jug when his low back went out. Claimant testified that after this incident, he had problems with his upper and lower back and both legs. The more he moved the worse the pain.

Claimant stated he starts out his days "decent", but as the days go on his pain gets worse and worse.[7] Claimant eventually has to lay down to alleviate the pain. In his present condition, claimant is not able to return to work with either Boeing or Spirit.

Since the March 2010 accident, claimant's low back pain has been constant, more frequent and more intense.[8] Claimant disagrees with the doctors who examined him after this current injury and found it to be a temporary aggravation only. He believes that his condition has permanently changed, especially considering he is unable to return to work.

Claimant last worked for Boeing in April 2010 and is currently on a medical leave of absence. He has no income at this time. His fringe benefits stopped six months after his leave began. When he was working, he was making more at Boeing ($30 an hour) than he was at Spirit ($25 an hour).

---

[5] *Id.*, Ex. 2 at 1 (Dr. Murati's Sept. 3, 2008 IME report).

[6] *Id.*, Ex. 2 at 3 (Dr. Murati's Sept. 3, 2008 IME report).

[7] R.M.H. & R.H. Trans. (Jan. 9, 2012) at 20-21.

[8] *Id.* at 38.

At respondent's request, claimant met with board certified orthopedic surgeon, Robert Eyster, M.D., for an examination on May 12, 2010. Dr. Eyster was asked to determine if claimant sustained a permanent injury on March 15, 2010, or a temporary exacerbation of a prior condition. Claimant reported complaints of tiredness and pain in his back that radiates down into his legs with movement, including walking and bending. Claimant acknowledged he had a prior back injury that left him with chronic back pain and episodes of pain in his legs and hips. Dr. Eyster noted that claimant had degenerative disc disease and was taking medication for pain and depression as prescribed by his family physician, Dr. Del Ray.

Dr. Eyster determined claimant had a low back strain with a previous diagnosis of low back degenerative disc disease with chronic symptomatology. He noted that the recent change in claimant's symptomatology included increased tiredness, but no new neurologic deficits were seen. Dr. Eyster opined that claimant irritated his preexisting low back condition after moving a 55 gallon barrel and moving a 5 gallon plastic can of hydraulic fluid. He felt claimant's primary problem was chronic in nature from a previous condition, known to have flare-ups. He felt that claimant's present condition should be considered temporary.

Dr. Eyster did not feel that claimant was in need of surgery or injections and he found no disability from the March 15, 2010, injury. He felt claimant had the ability to work with restrictions, including no repetitive lifting over 20 pounds, no single lift over 30 pounds and no repetitive forward bending, to protect the back.

Claimant was seen again by Dr. Eyster, on July 10, 2010, with continued pain in the lower back, which was radiating into claimant's left hip and leg. Claimant hadn't been working. He was instructed to continue with his restrictions and was sent to physical therapy.

On July 21, 2010, after physical therapy, claimant returned to Dr. Eyster, with continued low back pain, but improved left leg pain. His main complaint was tiredness and pain in the upper thoracic region, for which he received an injection from Dr. Del Ray. Dr. Eyster recommended claimant continue with physical therapy.

On August 30, 2010, claimant was complaining of pain in the thoracic region and neck more than in the lumbar area. Dr. Eyster ordered an MRI of the thoracic region and neck, which revealed degenerative changes in the neck, which appeared to be chronic, and nothing in the thoracic region. Dr. Eyster did not find a correlation between the original symptomatology and the injury of March 2010.

Dr. Eyster met with claimant again on October 1, 2010. Claimant was having increased pain in his legs, which he could relate to the low back and was, therefore, authorized to treat. Claimant wanted to explore the possibility of surgery, which Dr. Eyster

was unwilling to pursue. The restrictions continued, and Dr. Eyster found claimant to be at maximum medical improvement.

On March 24, 2011, Dr. Eyster rated claimant at a 5 percent whole person functional impairment for the neck and a 5 percent whole person functional impairment for claimant's low back. No rating was given for claimant's thoracic spine. All ratings were pursuant to the AMA Guides, 4th ed.[9] Dr. Eyster testified that these ratings combine for a 9 percent whole body functional impairment from the degenerative disc conditions diagnosed. Under the AMA Guides, 4th ed., a 5 percent whole body impairment, when combined with another 5 percent whole body functional impairment calculates to a 10 percent whole body functional impairment. Dr. Eyster was unable to explain the loss of 1 percent from his rating.[10] He agreed that, given claimant's current restrictions, he would not pass claimant on a pre-employment physical.

Dr. Eyster testified that claimant's condition waxed and waned during the seven months he treated claimant. His final opinion was that claimant suffered a temporary aggravation of his previous condition.[11]

At the request of his attorney, claimant again met with Dr. Murati, for an examination on November 1, 2010. Claimant presented with chief complaints of pain in the lower back going down into both hips; pain in the lower back going into the upper back; and trouble standing for long periods of time. Dr. Murati determined that the pain in claimant's upper back was a new complaint.

Dr. Murati diagnosed claimant with an aggravation of low back pain with signs and symptoms of radiculopathy and bilateral sacroiliac joint dysfunction. Dr. Murati related his diagnosis to claimant's work-related injuries that occurred from March 2010 through April 22, 2010, during claimant's employment with Boeing. Dr. Murati opined that claimant had aggravated a preexisting condition.[12] He also assigned claimant a 5 percent whole person impairment for an aggravation of the low back pain with signs and symptoms of radiculopathy, utilizing the Pain Chapter of the AMA *Guides, 4th ed*.[13]

---

[9] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

[10] Eyster Depo. at 26-27.

[11] *Id.* at 19.

[12] Murati Depo. at 17.

[13] *Id.*, Ex. 3 at 2-3 (Dr. Murati's Nov. 1, 2010 IME report).

Dr. Murati imposed permanent restrictions of no crawling, no lifting, carrying, pushing or pulling over 20 pounds, 20 pounds occasionally and 10 pounds frequently; rarely bend, crouch, or stoop; occasionally sit, climb stairs, climb ladders, squat, or drive; frequently stand and walk and alternate sitting, standing and walking.[14]

Dr. Murati reviewed the task list of vocational expert Jerry Hardin and opined that, out of 37 tasks on the list, claimant could no longer perform 23, for a 62 percent task loss.

Claimant met with Dr. Pat Do, a board certified orthopaedic surgeon for a court-ordered IME on September 7, 2011, to evaluate his low back and left leg pain. Dr. Do noted claimant had already been rated with a 15 percent whole body impairment for a 1994 injury. He also made note of claimant's injury in March 2010. Claimant reported that his pain is somewhat different in character from what he had in 1994. Dr. Do acknowledged that would be expected as a result of the natural progression of claimant's 1994 and 2008 injuries.

Dr. Do examined claimant and found him to have tenderness throughout the cervical, thoracic and lumbar spine. There were no signs of nerve root tension in the right leg, but there were in the left leg. He found decreased sensation in the dorsum and lateral aspect of the left foot, but no clonus bilaterally.[15]

Dr. Do diagnosed low back pain with left leg radiculopathy. He did not feel that claimant's March 15, 2010, work incident caused any permanent aggravation to the lower back. At most claimant had a temporary aggravation of his preexisting back problems. He opined that even if claimant had a new injury, there would be no impairment above and beyond the previous impairment.[16] And since he related claimant's current condition as a temporary aggravation, he felt that the impairment would be the same 15 percent whole body rating for the low back. Therefore, claimant suffered no new impairment.

Dr. Do acknowledged he would not pass the claimant on a pre-employment physical to do work outside of any restrictions. He was aware that claimant worked for Boeing and Spirit with no restrictions. He opined that, no question, claimant had a worsening of his pain. However, he did not believe claimant was dealing with a new problem.[17] Because claimant had only increased pain from a preexisting problem, Dr. Do opined under AMA *Guides, 4th ed.,* claimant had no additional impairment.

---

[14] *Id.*, Ex. 3 at 4 (Release to Return to Work dated Nov. 1, 2010).

[15] Do Depo., Ex. 3 at 2 (Dr. Do's Sept. 7, 2011 IME report).

[16] *Id.*, Ex. 3 at 3 (Dr. Do's Sept. 7, 2011 IME report).

[17] *Id.* at 25.

Dr. Thomas Cox, a specialist in diagnostic radiology, testified regarding two MRIs conducted on claimant. The first MRI on April 29, 2008, showed degenerative disease to the vertebral body endplates and discs of the lower lumbar spine, particularly L4-L5 and L5-S1. The second MRI on March 29, 2010, showed degenerative changes to the vertebral body endplates, discs and posterior elements at the L4-5 and L5-S1 levels.[18] He found no difference between the two MRIs. Dr. Cox agreed that, although there was no difference between the MRIs, an individual could have a difference in symptoms.

Jerry Hardin met with claimant on November 22, 2010, for a vocational assessment. Mr. Hardin prepared a list of tasks performed by claimant during the 15 years preceding the accident. He determined claimant performed 52 tasks while working 5 separate jobs. Of the 52 tasks on the list, 37 were considered non-duplicative. Claimant was not working at the time of this meeting, therefore Mr. Hardin found claimant to have a 100 percent wage loss.

## PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.[19]

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[20]

> If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.[21]

The two phrases "arising out of" and "in the course of," as used in K.S.A. 44-501, *et seq*.,

> . . . have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident

---

[18] Cox Depo. at 7-8.

[19] K.S.A. 2009 Supp. 44-501 and K.S.A. 2009 Supp 44-508(g).

[20] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

[21] K.S.A. 2009 Supp. 44-501(a).

> occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment."[22]

It was agreed that claimant has suffered accidents, resulting in permanent injury while working for both Boeing and Spirit. The dispute centers around claimant's most recent employment period with Boeing and whether he suffered permanent injury during that time or just a temporary aggravation of the injuries he received while working for Spirit. As is common in these litigated cases, the evidence is conflicting.

Claimant suffered permanent injuries on September 10, 1994, while working for Boeing the first time, resulting in a 15 percent permanent partial whole body functional disability. He later suffered additional injuries, with an accident date of April 22, 2008, while working for Spirit, resulting in an additional 5 percent permanent partial whole body functional impairment, in docket number 1,040,108. After both employment injuries claimant returned to work without permanent restrictions.

The latest accident occurred on March 15, 2010, (Docket No. 1,050,418) while claimant was again working for Boeing. This accident resulted in the current litigation, with the dispute being whether claimant's injuries resulted in temporary aggravations or permanent injuries. The medical evidence supports both positions. Dr. Cox read the MRIs finding no change in claimant's condition between the 2008 accident and the 2010 accident. Dr. Do, who examined claimant after the most recent alleged accident, noted claimant's increased symptoms as a result of the March 15, 2010 accident. But, he opined claimant suffered no increase in his permanent impairment above the original preexisting 15 percent whole body functional impairment.

Dr. Eyster rated claimant at 5 percent to the whole person for claimant's neck and 5 percent for claimant's low back, which he then combined for a 9 percent whole person impairment. However, he was unable to explain a lost 1 percent from his rating. Under the AMA Guides, 4th ed., the combined value should have been 10 percent. Additionally, Dr. Eyster agreed that claimant, in his current condition, would not pass a pre-employment physical.

Dr. Murati's opinion conflicts with the other three medical opinions. However, he was the only doctor who examined claimant after both the 2008 and 2010 accidents. Dr. Murati determined the March 15, 2010, accident resulted in a permanent aggravation to

---

[22] *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984); *citing Newman v. Bennett*, 212 Kan. 562, Syl. ¶ 1, 512 P.2d 497 (1973).

claimant's preexisting problems, resulting in an additional 5 percent permanent partial whole body functional impairment.

It is well established under the Kansas Workers Compensation Act, that when a worker's job duties aggravate or accelerate an existing condition or disease, or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident.[23]

Normally, when the medical evidence is weighted in favor of one position, the Board will rely on and award that position. However, another element exists in this record which is significant. After both of claimant's earlier injuries, with Boeing the first time and later with Spirit, claimant returned to his regular duties without permanent restrictions. After the Boeing accident on March 15, 2010, claimant was unable to return to work without significant restrictions. Dr. Eyster agreed, after that recent accident, he would be unwilling to pass claimant during a pre-employment physical. While claimant's permanent functional impairment resulting from the March 15, 2010, accident is disputed, this record creates a compelling argument that claimant has lost the physical ability to perform his former jobs, without significant limitations, due to the March 15, 2010 accident. Additionally, claimant testified that he cannot return to his former job due to the March 15, 2010, accident and resulting injuries. His pain levels have increased and his limitations are more significant. The Board finds claimant suffered an accidental injury on March 15, 2010, which arose out of and in the course of his employment with Boeing, resulting in a permanent injury.

K.S.A. 2000 Furse 44-510e defines functional impairment as,

> . . . the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein.[24]

As a result of this accident, claimant's functional impairment has increased by 5 percent to the whole person. Claimant's most recent employment at Boeing has resulted in a new accident and resulting injury. The Award of the ALJ which assesses claimant's permanent partial general disability award against Spirit is reversed, and claimant's request for a review and modification of the November 7, 2008, running award in Docket Number 1,040,108 is denied.

---

[23] *Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978).

[24] K.S.A. 44-510e(a).

K.S.A. 2000 Furse 44-510e states in part:

> The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury.[25]

Due to his most recent work related injuries, claimant has been unable to return to work, creating a 100 percent wage loss. Additionally, Dr. Murati determined that claimant suffered a 62 percent loss of task performing ability. This calculates to a work disability of 81 percent. The Board finds this Award should be assessed against Boeing in Docket Number 1,050,418. The Award of the ALJ in Docket Number 1,050,418, is reversed.

K.S.A. 2009 Supp. 44-501(c) states:

> The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.[26]

Additionally, it is the burden of respondent and its insurance carrier to prove the amount of functional impairment that existed before claimant's February 26, 2001 date of accident.[27]

Claimant has a long history of low back problems associated with more than one work-related injury. He was granted permanent partial functional awards following his earlier injuries at Boeing and at Spirit. The Board finds that, pursuant to K.S.A. 2009 Supp. 44-501(c) respondent, Boeing, is entitled to a reduction in the award in Docket Number 1,050,418, based upon a 20 percent whole person functional impairment.

This decision renders Spirit's issue dealing with an offset against any period claimant was earning comparable wages moot.

---

[25] K.S.A. 44-510e.

[26] K.S.A. 44-501(c).

[27] *Hanson v. Logan U.S.D. 326*, 28 Kan. App. 2d 92, Syl. ¶ 5, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

## CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be reversed and claimant's request for a review and modification of the Award against Spirit in Docket Number 1,040,108 is denied.

Additionally, the denial of an Award against Boeing in Docket Number 1,050,418, in excess of the authorized medical expenses in the amount of $3,508.59, is reversed and claimant is awarded an additional whole person functional impairment of 5 percent, followed by a permanent partial general disability award of 81 percent. Respondent, Boeing, is allowed a 20 percent whole person functional impairment offset against this award, pursuant to K.S.A. 2009 Supp. 44-501(c), resulting in a 61 percent whole person permanent partial general disability award.

## AWARD

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated July 13, 2012, in docket number 1,040,108 is reversed and claimant's request for a review and modification of the previous running award is denied.

Additionally, the Award in Docket Number 1,050,418 is reversed and claimant is awarded an additional whole person functional impairment of 5 percent followed by a permanent partial general disability award of 61 percent, after a pre-existing 20 percent whole person functional impairment is deducted, pursuant to K.S.A. 2009 Supp. 44-501(c).

Claimant is entitled to weekly compensation at the maximum rate of $546.00 for 183.15 weeks, for a 61 percent permanent partial general disability in Docket Number 1,050, 418, representing a maximum award of $100,000.00, based upon a date of accident of March 15, 2010, and an average weekly wage of $1,536.71. Due to the accelerated payout of awards under K.S.A. 2009 Supp. 44-510e, the payout on claimant's functional impairment of 5 percent will not be calculated separately.

As of March 1, 2013, claimant is due and owing 154.57 weeks of permanent partial disability compensation at the weekly rate of $546.00, totaling $84,395.32, which is ordered paid in one lump sum, minus any amounts previously paid. Thereafter, the remaining balance in the amount of $15,604.68 shall be paid at the rate of $546.00 per week, until fully paid or until further order of the Director.

In all other regards the Award of the ALJ, dated July 13, 2012, is affirmed insofar as it doesn't contradict the findings and conclusions contained herein.

**IT IS SO ORDERED.**

Dated this _____ day of March, 2013.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Thomas E. Hammond, Attorney for Claimant
lhathaway@hzflaw.com
thammond@hzflaw.com

Kirby A. Vernon, Attorney for Spirit Aerosystems, Inc. and its carrier American Home Assurance
cvernon@kirbyavernon.com
kvernon@kirbyavernon.com

Eric K. Kuhn, Attorney for The Boeing Company and its carrier Indemnity Ins. Co. of North America.
ekuhn@foulston.com

Nelsonna Potts Barnes, Administrative Law Judge